

NOTICE OF MOTION COVER SHEET

Debtor: Luvia Mancheno  
Bankruptcy Case #10-41743

Judge Elizabeth Stong

Plaintiffs/Movant:  
U.S. Bank National Association, as Trustee

Attorneys for Movant:  
Anne E. Miller-Hulbert  
Shapiro, DiCaro & Barak, LLP  
250 Mile Crossing Boulevard  
Suite One  
Rochester, NY 14624

Attorneys for Debtor  
Ismael Gonzalez  
152 West 36th Street  
Suite 202  
New York, NY 10018

**NATURE OF SUIT**  
(Check All Boxes That Apply)

- ☒ To Grant Relief from Automatic Stay, 11 USC Section 362 (d)  
(\$150.00 fee required).
- ☐ Amended Notice Of Motion for Relief from Automatic Stay  
(no fee required).
- ☐ To Withdraw the Reference of a Case, 11 USC Section 362 (d)  
(\$60.00 fee required).
- ☐ To Object to Confirmation of Chapter 13 Plan  
(fee not required).
- ☐ To Extend time to Object to Discharge/Dischargeability
- ☐ To Dismiss (fee not required).
- ☐ To Convert (fee not required).
- ☐ To Extend Exclusivity Period to File Plan
- ☐ Other -

**FILING FEE** **XX** **Attached**

☐ **Not Required**

**XX** **Credit Card**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

HEARING DATE: April 16, 2010  
HEARING TIME: 10:00a.m.  
HEARING PLACE: Brooklyn

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IN RE

LUVIA MANCHENO

DEBTOR

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CHAPTER 7

CASE NO. 10-41743

JUDGE: Elizabeth Stong

**NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY  
PURSUANT TO BANKRUPTCY RULE 4001 AND 11 U.S.C. §362 (d)  
DUE TO A LACK OF ADEQUATE PROTECTION (AND A LACK OF EQUITY)  
PURSUANT TO 11 U.S.C. §361**

**PLEASE TAKE NOTICE** that U.S. Bank National Association, as Trustee, by and through its attorneys, Shapiro, DiCaro & Barak, LLP, will move this Court at the United States Bankruptcy Court, 271 Cadman Plaza East, Court Room #3585, Brooklyn, NY 11201, on April 16, 2010 at 10:00a.m., or as soon thereafter as counsel may be heard, for an Order:

1. Pursuant to Bankruptcy Rule 4001 and 11 U.S.C. §362(d), granting U.S. Bank National Association, as Trustee relief from the automatic stay due to Debtor's inability to provide adequate protection to the interest of U.S. Bank National Association, as Trustee pursuant to 11 U.S.C. §361; and/or

2. Granting U.S. Bank National Association, as Trustee such other and further relief as is just and proper.

**PLEASE TAKE FURTHER NOTICE**, that answering affidavits, if any, are required to be served upon the undersigned at least seven (7) days before the return date of this motion.

Dated: March 12, 2010  
Rochester, New York



Anne E. Miller-Hulbert  
Shapiro, DiCaro & Barak, LLP  
Attorneys for U.S. Bank National Association, as  
Trustee  
250 Mile Crossing Boulevard  
Suite One  
Rochester, NY 14624  
(585) 247-9000

TO: Debtor  
Luvia Mancheno  
66-26 50th Avenue  
Woodside, NY 11377

Attorney for Debtor  
Ismael Gonzalez  
152 West 36th Street  
Suite 202  
New York, NY 10018

Trustee  
Debra Kramer  
98 Cutter Mill Rd  
Suite 466 South  
Great Neck, NY 11021

US Trustee  
271 Cadman Plaza East  
Suite 4529  
Brooklyn, NY 11201

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

HEARING DATE: April 16, 2010  
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IN RE

LUVIA MANCHENO

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CHAPTER 7

CASE NO. 10-41743

JUDGE: Elizabeth Stong

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY  
PURSUANT TO BANKRUPTCY RULE 4001 AND 11 U.S.C. §362(d)  
DUE TO A LACK OF ADEQUATE PROTECTION (AND A LACK OF EQUITY)  
PURSUANT TO 11 U.S.C. §361**

U.S. Bank National Association, as Trustee, by and through its attorneys, Shapiro, DiCaro & Barak, LLP, for an Order vacating the automatic stay pursuant to 11 U.S.C. §362(d) and Bankruptcy Rule 4001 due to a lack of adequate protection pursuant to 11 U.S.C. §361, and in support thereof, states as follows:

1. Debtor filed a petition for relief under Chapter 7 of the U.S. Bankruptcy Code on or about March 3, 2010.
2. U.S. Bank National Association, as Trustee is a secured creditor of the Debtor by virtue of a mortgage executed by Debtor on July 31, 2003 and given to Merrill Lynch Credit Corporation securing the repayment of the principal sum of \$464,000.00 due under the Bond/Note and granting Merrill Lynch Credit Corporation a security interest in the Property commonly known as 66-26 50th Avenue, Woodside, NY 11377 (the "Property"). Copies of the Mortgage and Bond/Note are annexed hereto as Exhibit "A". The mortgage was assigned to U.S. Bank National Association as Trustee by instrument dated January 21, 2009. A copy of the

assignment of mortgage is annexed as Exhibit "B". Movant has standing to bring this Motion for Relief from Stay as the holder of the mortgage.

3. A copy of the Relief from Automatic Stay – Real Estate and Cooperative Apartment Work Sheet is annexed hereto as Exhibit "C".

4. Upon information and belief, the payoff amount on the Mortgage is \$513,624.31. The subject mortgage is the first mortgage on the Property. Upon information and belief, there is a second mortgage on the Property held by Merrill Lynch Credit Corporation in the amount of \$32,466.02.

5. Upon information and belief, the loan is contractually due for September 1, 2008.

6. The amount now due under the mortgage is as follows:

6 Defaulted Monthly Payments at \$3,576.52 each (September 2008 through February 2009)	\$21,459.12
6 Defaulted Monthly Payments at \$3,315.56 each (March 2009 through August 2009)	\$19,893.36
6 Defaulted Monthly Payments at \$2,861.77 each (September 2009 through February 2010)	\$17,170.62
1 Defaulted Monthly Payments at \$2,691.92 each (March 2010 through March 2010)	\$2,691.92
19 Late Charges at \$54.86 each (September 2008 through March 2010)	\$1,042.34
Escrow Advances	\$16,238.90
Foreclosure Fees and Costs	\$2,852.00
Bankruptcy Attorneys Fees	\$650.00
Filing Fee	\$150.00
Total Delinquencies	<hr/> \$82,148.26

7. According to the Debtor's Schedule D, the appraised value of the Property is \$525,000.00.

8. Upon information and belief, there is little or no equity in the Property and U.S. Bank National Association, as Trustee has not been offered adequate protection for its interest in the Property.

9. Movant specifically waives the requirements of Bankruptcy Code § 362 (e).

10. It is respectfully submitted that good cause exists to vacate the automatic stay of 11 U.S.C. §362 to allow U.S. Bank National Association, as Trustee to maintain a foreclosure action on its mortgage.

**WHEREFORE**, U.S. Bank National Association, as Trustee respectfully requests that an Order be granted vacating the automatic stay as to U.S. Bank National Association, as Trustee so as to permit the commencement, resumption or maintenance of mortgage foreclosure proceedings with respect to the Property, and for such other and further relief as the Court may deem just and proper.

Dated: March 12, 2010

A handwritten signature in black ink, appearing to read "Anne E. Miller-Hulbert", written over a horizontal line.

Anne E. Miller-Hulbert  
Shapiro, DiCaro & Barak, LLP  
Attorneys for U.S. Bank National Association, as  
Trustee  
250 Mile Crossing Boulevard  
Suite One  
Rochester, NY 14624  
(585) 247-9000

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

HEARING DATE: April 16, 2010  
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CHAPTER 7

CASE NO. 10-41743

JUDGE: Elizabeth Stong

**ORDER GRANTING RELIEF FROM  
THE AUTOMATIC STAY**

Upon the Motion of U.S. Bank National Association, as Trustee dated March 12, 2010 with exhibits attached thereto, with proof of service upon the Trustee, Debtor and Debtor's Attorney and the United States Trustee, and the Motion having come to be heard on April 16, 2010, it is hereby:

**ORDERED** that the automatic stay in effect pursuant to 11 U.S.C. Section 362(a) is hereby vacated for cause pursuant to 11 U.S.C. Section 362(d) as to U.S. Bank National Association, as Trustee, its agents, assigns or successors in interest so that U.S. Bank National Association, as Trustee, its agents, assigns or successors in interest may pursue its rights under applicable state law with respect to the premises known as 66-26 50th Avenue, Woodside, NY 11377, and it is further

**ORDERED** that the Movant shall immediately provide an accounting to the Trustee of any surplus monies realized as a result of the foreclosure sale.

Dated: \_\_\_\_\_, 2010  
Brooklyn, NY

Enter:

\_\_\_\_\_  
Honorable Elizabeth Stong  
United States Bankruptcy Judge



UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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CHAPTER 7

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JUDGE: Elizabeth Stong

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**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF NEW YORK     )  
                                      )ss:  
COUNTY OF MONROE     )

I, Shannon Thompson, being sworn, says, I am not a party to this action; I am over 18 years of age, I reside in Rochester, New York.

On March 12, 2010 I served the within Notice of Motion and Motion for Relief From the Automatic Stay upon:

TO: Debtor  
Luvia Mancheno  
66-26 50th Avenue  
Woodside, NY 11377

Attorney for Debtor  
Ismael Gonzalez  
152 West 36th Street  
Suite 202  
New York, NY 10018

Trustee  
Debra Kramer  
98 Cutter Mill Rd  
Suite 466 South  
Great Neck, NY 11021

US Trustee  
271 Cadman Plaza East  
Suite 4529  
Brooklyn, NY 11201

the addresses designated by the foregoing individuals for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depositary under the exclusive care and custody of the United States Postal Service within the State of New York.



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Shannon Thompson  
Legal Assistant

Sworn to before me this  
12th day of March, 2010,



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Notary Public  
Anne E. Hulbert  
Qualified in Monroe County  
Commissions Expires May 31, 2010